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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2022

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

H.C.P.No.276 of 2022

Keerthi
W/o.Ezhumalai

..Petitioner

Vs.

1. The Senior Superintendent of Police (Law & Order),
Orleanpet Police Station, (upstairs)
Puducherry.
2. State represented by
The Inspector of Police,
Thavalakuppam Police Station,
Puducherry.
3. Child Welfare Committee,
represented by its Chairman,
Office at OHSS, Ariyankuppam,
Puducherry.
4. Cluny Children's Home,
No.8, Romain Rolland Street,
Puducherry - 01.
5. The Department of Women and Child Welfare,
Puducherry.

[R5 suo motu impleaded as per order in
H.C.P.No.276 of 2022 dated 24.02.2022]

..Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus directing the respondents to produce the detenu, the petitioner's one 1½ year male child, born to the petitioner on 25.04.2020, at Rajiv Gandhi Government Women and Children Hospital, Puducherry, before this Court and hand over custody of the child to the petitioner.



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For Petitioner : Mr.B.Balavijayan
For Respondents: Mr.V.Balamurugane
Additional Public Prosecutor
[Puducherry] [R1 to R3 & R5]
Mr.T.M.Mano
for Mr.Sarath Chandran [R4]

ORDER

[Order of the Court was made by P.N.PRAKASH, J]

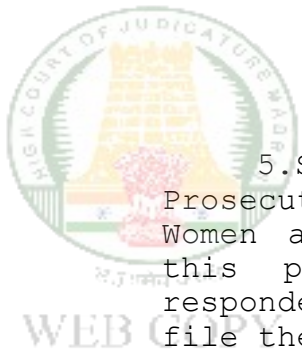
This petition has been filed seeking a direction to the respondents to produce the detenu, the petitioner's 1½ year male child, before this Court and hand over custody of the child to the petitioner.

2. The minimum facts that are required for deciding this petition are as under:

The petitioner, whose date of birth is 05.06.2003, was given in marriage to Ezhumalai on 28.08.2019, when the petitioner had not even attained the marriageable age. The marriage was solemnized in Tirupathi in the presence of family members of the bride and bridegroom. After marriage, some misunderstandings cropped up between the petitioner and her husband Ezhumalai, in connection with which, on the complaint given by the petitioner, a case in Thavalakuppam P.S.Crime No.25/2020 was registered on 10.03.2020 against Ezhumalai for the offences u/s.4 of the POCSO Act and Section 9 of the Children Marriage Prohibition Act, 2006. Ezhumalai was arrested by the police and was remanded in judicial custody. It was found that the petitioner was pregnant and therefore, she was admitted in the Rajiv Gandhi Women and Children Hospital, Puducherry, where she delivered a male baby on 25.04.2020. Alleging that her child is in the illegal custody of respondents 3 and 4, the petitioner has filed the present petition.

3.When the matter came up for hearing on 24.02.2022, we heard Mr.B.Balavijayan, learned counsel for the petitioner and Mr.V.Balamurugane, learned Additional Public Prosecutor [Puducherry] for respondents 1 to 3 and 5. Mr.Sarath Chandran, Advocate, entered appearance for Cluny Children's Home [fourth respondent herein].

4.It was represented on behalf of the fourth respondent that the detenu child has been given in valid adoption to a couple on the orders of the District Court, Puducherry and that under the adoption rules, the names of the adoptive parents should not be disclosed.



5. Since Mr.V.Balamurugane, learned Additional Public Prosecutor [Puducherry], submitted that the Department of Home, Women and Child Welfare, Puducherry, is a necessary party in this proceeding, we suo motu impleaded them as fifth respondent. We further directed the respondents 3, 4 and 5 to file their counter.

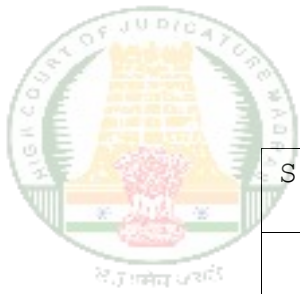
6. Today, when the matter was taken up for hearing, the petitioner is present with her counsel. Mr.S.Sivasamy, Chairman, Child Welfare Committee, Puducherry and Mr.P.V.Jagatish, Law Officer of the fifth respondent, are present with the files. The fourth respondent submitted to this Court the records relating to the adoption in a sealed cover, which we perused.

7. Ms.P.Muthu Meena, Director cum Secretary in the office of the fifth respondent, has filed counter affidavit dated 05.03.2022, wherein, in paragraph No.6, the dates and events relating to the case have been

furnished and the same is as under:

'6. I further submit that, the following dates and events will be much importance and convenience for this Hon'ble Court to decide the issue in this petition.

Sl.No	Date	Events
1.	28.08.2019	The petitioner married one Ezhumalai (arranged marriage).
2.	09.03.2020	Ezhumalai the husband of the petitioner assaulted her.
3.	25.04.2020	The petitioner has given birth to a male child.
4.	05.05.2020	Application by the petitioner for surrender of the child.
5.	05.05.2020	Surrender Deed executed by the petitioner, attested by her mother, under section 35(2) of the JJ Act r/w section 7(7) of the Regulations.
6.	05.05.2020	Temporary custody of the child is handed over to the 4 th respondent through 3 rd respondent.
7.	08.07.2020	The 3 rd respondent issues the certificate under section 7(17) of the Adoption Regulations - 2017.



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Sl.No	Date	Events
8.	24.09.2020	The child was given in adoption by the duly constituted Adoption Committee under the Adoption Regulations Section 10(4), headed by the 5 th respondent as the Member Secretary, a visiting Doctor and a member of the Specialized Adoption Agency.
9.	01.10.2020	The 4 th respondent has filed a petition before the jurisdictional District Court for adoption.
10.	02.12.2020	The District Court decreed the adoption.
11.	14.12.2020	The husband of the petitioner was released on bail by the court.
12.	23.12.2020	The petitioner approached the 3 rd respondent claiming back her son and to cancel her surrender.

8. On a perusal of the records that were submitted in the sealed cover, we find that the petitioner's child has been given in valid adoption to a couple on the orders of the District Court, Puducherry, as early as on 02.12.2020. Therefore, it cannot be stated that the detenu child is in the illegal custody of respondents 3 and 4 for issuance of a writ of habeas corpus.

9. We returned the documents, that were submitted by the fourth respondent in the sealed cover, back to the fourth respondent as the same should not form part and parcel of the records as that may lead to disclosure of the names of the adoptive parents.

10. Mr.V.Balamurugane, learned Additional Public Prosecutor [Puducherry], submitted that u/s.35(3) of the Juvenile Justice (Care & Protection of Children) Act, the petitioner was given two months time to reconsider her decision and only after the expiry of the said period, the detenu child was made available for adoption and was entrusted to the fourth respondent. Learned Additional Public Prosecutor [Puducherry] also brought to the notice of this Court Regulation No.45 of the Adoption Regulations, 2017, which reads as follows:

'45. Confidentiality of adoption records.- All agencies or authorities involved in the adoption process shall ensure that confidentiality of adoption records is maintained, except as permitted under any



other law for the time being in force and for such purpose, the adoption Court order may not be displayed in any public portal.'

11. In such view of the matter, we are afraid, we cannot disclose the details with regard to the orders that were passed by the District Court, Puducherry, on 02.12.2020.

Accordingly, this Habeas Corpus Petition is closed with liberty to the petitioner to work out her remedy in the manner known to law, if any.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Senior Superintendent of Police (Law & Order),
Orleanpet Police Station, (upstairs)
Puducherry.
2. The Inspector of Police,
Thavalakuppam Police Station,
Puducherry.
3. The Chairman,
Child Welfare Committee,
Office at OHSS, Ariyankuppam,
Puducherry.
4. The Department of Women and Child Welfare,
Puducherry.
5. The Public Prosecutor,
Puducherry.

+1cc to Mr.B.Balavijayan, Petitioner Advocate, S.R.No.15928

+1cc to Mr.Govind Chandrasekhar, 4th Respondent Advocate,
S.R.No.15922

H.C.P.No.276 of 2022

NR(CO)
RGA(04/04/2022)